

licensees that are relocated in furtherance of the Commission's licensing of emerging technologies in the 2 GHz band.

IV. Microwave Licenses for 2 GHz Facilities Proposed After the Date the NPRM Was Issued Should Retain Primary Status.

The Commission's initial proposal to grant new microwave station applications filed after the adoption date of the NPRM (January 16, 1992) only on a secondary basis would have adversely affected the ability of incumbent 2 GHz licensees to construct and modify their microwave networks.²¹

Accordingly, OCOM concurs with the Commission's decision to retain licensees' primary status for 2 GHz facilities that had been licensed prior to January 16, 1992, but modified after that date.²² This would at least afford existing 2 GHz users the ability to modify their systems when necessary to meet changed circumstances without jeopardizing the status of their facilities. OCOM also concurs in the Commission's policy favoring the grant of primary status to 2 GHz facilities

²¹ NPRM at ¶ 23.

²² See Public Notice, "Two Gigahertz Fixed Microwave Licensing Policy," released May 14, 1992.

first licensed after January 16, 1992 upon a valid showing of need "where additional links may be required to complete a communications network, or where new facilities and/or frequencies are operationally connected to a system licensed prior to January 16, 1992."²³ This is crucial to carriers such as OCOM that must add microwave stations to expand current networks and meet the capacity requirements of its customers. Moreover, granting primary status to existing licensees in these cases would encourage new users and incumbents to develop new modulation schemes to coordinate shared-use or co-habitation arrangements. See supra pp. 16-17.²⁴

The Commission's interest in deterring speculation in the 2 GHz band is understandable. However, the existing rules governing 2 GHz licensing already include

²³ Id. at 2.

²⁴ OCOM also supports the proposal -- assuming the Commission ultimately reallocates the 2 GHz spectrum -- to permit 2 GHz microwave licensees to operate 2 GHz facilities indefinitely, on a secondary basis, until the new licensees require use of the spectrum. NPRM at ¶ 24. For example, while incumbent 2 GHz licensees like OCOM have many 2 GHz paths in rural areas, future PCS licensees are likely to provide service initially in urban areas. Thus, if the parties coordinate properly, long term co-use of the frequencies may be possible even without deployment of new shared use technologies. See supra pp. 16-17.

provisions to deter speculation, such as construction and anti-trafficking requirements for common carrier microwave licensees.²⁵ OCOM submits that these provisions are sufficient to protect against long-term frequency warehousing.

Companies like OCOM could not feasibly construct new 2 GHz facilities already planned but not yet proposed on January 16 because there is no way to ensure continued reliable service to the public or to ensure recoupment of the investment into such new facilities. Accordingly, if the Commission is to commence awarding licenses on a secondary basis, it should do so only with sufficient prior notice to existing licensees. This would enable such users to plan accordingly.

Conclusion

For the foregoing reasons, OCOM urges the Commission not to reallocate the microwave frequencies within the 2 GHz band to emerging technologies without consideration of alternatives to such a broad reallocation. Moreover, in the event that reallocation of the 2 GHz

²⁵ 47 C.F.R. §§ 21.39, 21.43(a).

band is ultimately warranted, the Commission should establish rules and procedures to protect the interests of existing 2 GHz licensees and ensure the continued integrity of the services they provide.

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